

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anna Steel	Team: Team # 8	CCRB Case #: 200802670	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/01/2008 4:00 AM	Location of Incident: 2575 Coney Island	Precinct: 61	18 Mo. SOL 7/1/2009	EO SOL 7/1/2009	
Date/Time CV Reported Thu, 02/21/2008 3:59 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/21/2008 3:59 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael McGovern	04659	938989	061 PCT
2. LT Timothy Harrington	00000	917095	061 PCT
3. SGT Antero Alvarado	01531	917222	061 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Timothy Harrington	Abuse: Lt. Timothy Harrington did not obtain medical treatment for § 87(2)(b)	
B.LT Timothy Harrington	Discourtesy: Lt. Timothy Harrington spoke obscenely to § 87(2)(b)	
C.SGT Antero Alvarado	Discourtesy: Sgt. Antero Alvarado spoke obscenely to § 87(2)(b)	
D.POM Michael McGovern	Discourtesy: PO Michael McGovern spoke obscenely to § 87(2)(b)	
E.LT Timothy Harrington	Force: Lt. Timothy Harrington shot § 87(2)(b) with a taser.	
F.LT Timothy Harrington	Force: Lt. Timothy Harrington used physical force against § 87(2)(b)	
G.SGT Antero Alvarado	Force: Sgt. Antero Alvarado used physical force against § 87(2)(b)	
H.POM Michael McGovern	Force: PO Michael McGovern used physical force against § 87(2)(b)	

## Synopsis

January 1, 2008, at 3:48 AM, § 87(2)(b) was arrested by an officer identified through investigation as PO Majid Ghaffar of the 66<sup>th</sup> Precinct. § 87(2)(b) was arrested in front of § 87(2)(b) in Brooklyn for § 87(2)(b). He was transported to the 61<sup>st</sup> Precinct and placed in a holding cell at 3:50 AM. While in the holding cell, § 87(2)(b) told an officer, identified through investigation as Lt. Timothy Harrington of the 61<sup>st</sup> Precinct, that he was having difficulty breathing, experiencing chest pain and wished to go to the hospital. In reply, Lt. Harrington told him he could not go to the hospital (**Allegation A**). § 87(2)(b) continued to converse with Lt. Harrington. § 87(2)(b) alleged that Lt. Harrington and two additional officers, identified through the investigation as Sgt. Antero Alvarado and PO Michael McGovern of the 61<sup>st</sup> Precinct, directed profanity towards him during this time (**Allegation B, C and D**). § 87(2)(b) told the officers to bring him to the hospital and attempted to hang himself by tying his tee-shirt to the bars of the entrance to the holding cell. § 87(2)(b) alleged that Lt. Harrington retrieved a taser. § 87(2)(b) alleged that Lt. Harrington handed to PO McGovern with instructions to shoot § 87(2)(b). According to § 87(2)(b) PO McGovern shot him with the taser. However, the investigation determined that Lt. Harrington shot § 87(2)(b) with the taser (**Allegation E**). Lt. Harrington, Sgt. Alvarado and PO McGovern entered the holding cell. § 87(2)(b) alleged that the officers used physical force to restrain him and, in the process, an officer stepped on his right hand (**Allegation F, G and H**). An ambulance arrived at the 61<sup>st</sup> Precinct and § 87(2)(b) was transported to § 87(2)(b) as an emotionally disturbed person. At § 87(2)(b) the darts from the taser were removed from his stomach, the fourth digit of § 87(2)(b)'s hand was found to be fractured and he was psychiatrically evaluated.

§ 87(2)(g)

## Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) is § 87(2)(b). He is a white Hispanic male with brown hair and grey eyes. He is 5'10" tall and weighs 150 pounds. § 87(2)(b) provided statements to medical personnel on January 1, 2008 (encl. 6). § 87(2)(b) filed a complaint with the CCRB by phone on February 21, 2008 (encl. 7a – 7b). § 87(2)(b) was interviewed at the CCRB on March 13, 2008 (encl. 8a – 8f). His statements have been combined below § 87(2)(g).

### *Statements to Medical Personnel*

In an ambulance call report (encl. 17a – 17b) prepared on § 87(2)(b), § 87(2)(b) complained of shortness of breath. He was given oxygen by EMS.

In emergency department records (encl. 18a – 18b) prepared by medical personnel at § 87(2)(b), § 87(2)(b) complained of chest pain and shortness of breath. Medical personnel noted that § 87(2)(b) had threatened to kill himself by hanging, was shot with a taser and had been categorized as an EDP. In medical chart records (encl. 20a – 20i), medical personnel also noted that § 87(2)(b) complained of emotional problems and pain in an unspecified joint.

In psychiatric referral records (encl. 22a – 22f) prepared by medical personnel at § 87(2)(b), § 87(2)(b) stated that he began to experience shortness of breath in a holding cell while in

police custody. § 87(2)(b) described this feeling as ‘tightness in his chest’ and a feeling that something was closing in on his chest and neck. § 87(2)(b) stated that it felt exactly like earlier asthma attacks, but no one paid any attention to his symptoms. § 87(2)(b) stated that he then tried to put his shirt around his neck and feign suicide. That is when he was shot with a taser and brought to the hospital. Medical personnel noted that § 87(2)(b) became more comfortable after receiving a bronchodilator treatment. § 87(2)(b) denied drug use and admitted to consuming alcohol.

### **CCRB Statement**

On January 1, 2008, at approximately 3:00 AM, § 87(2)(b) was arrested for assault at the corner of Avenue U and East 14<sup>th</sup> Street in Brooklyn. When he was brought into the precinct, he saw two officers in uniform standing in front of the desk. He observed from their shields that their names were “Harrington” and “Alvarado.” These officers were identified through the investigation as Lt. Timothy Harrington and Sgt. Antero Alvarado of the 61<sup>st</sup> Precinct. § 87(2)(b) was placed in a holding cell. Throughout the incident, § 87(2)(b) was the only person in the holding cell.

Lt. Harrington and Sgt. Alvarado spoke to § 87(2)(b) through the bars of the holding cell. They encouraged him to confess to two counts of attempted murder. § 87(2)(b) felt a tightening in his chest, experienced shortness of breath, could not breathe easily, and felt dizzy and faint. § 87(2)(b) asked Lt. Harrington and Sgt. Alvarado for medical attention, and said that he could not breathe. In response, Lt. Harrington told him that he was not going anywhere and repeatedly encouraged § 87(2)(b) to commit suicide (**Allegation A**). § 87(2)(b) noticed a third officer, who was identified through the investigation as PO Michael McGovern of the 61<sup>st</sup> Precinct, when he was requesting medical attention. He observed from his shield that his name was “McGovern.”

§ 87(2)(b) continued to request to go to a hospital for thirty to forty-five minutes. § 87(2)(b)'s breathing became more labored until he lost consciousness. When he awoke, Lt. Harrington told him that the only way he was going to a hospital would be if he hung himself. Because § 87(2)(b) did not know what to do, or how else he might go to a hospital, § 87(2)(b) removed his sweater. § 87(2)(b) tied his sweater to the bars of the holding cell and tied the sleeves of his sweater around his neck. § 87(2)(b) told the officers to bring him to the hospital now. He then removed the sweater because it was restrictive. § 87(2)(b) held the sleeve of his sweater around his neck for about ten seconds.

The officers continued to make fun of § 87(2)(b). Lt. Harrington called him a “junkie motherfucker” (**Allegation B**), Sgt. Alvarado called him a “fucking lowlife” (**Allegation C**), and PO McGovern called him a “fucking shithead” (**Allegation D**). § 87(2)(b) began to cry. The symptoms of § 87(2)(b)'s anxiety attack had not dissipated. Two minutes later, the officers told him that he could go to the hospital.

Lt. Harrington retrieved a taser. § 87(2)(b) did not know where Lt. Harrington had retrieved the taser. Lt. Harrington said, “We got you now, motherfucker” (**Allegation B**). Lt. Harrington pointed the taser at § 87(2)(b) and § 87(2)(b) ran back and forth in the holding cell to avoid it. Lt. Harrington then handed the taser to PO McGovern and instructed him to shoot § 87(2)(b). § 87(2)(b) alleged that PO McGovern shot him with the taser between the bars of the holding cell (**Allegation E**). The barbs from the taser stuck in § 87(2)(b)'s body about three inches above his belly button. § 87(2)(b) fell to the ground in excruciating pain.

Lt. Harrington, Sgt. Alvarado and PO McGovern entered the holding cell and jumped on top of them (**Allegation F, G and H**). § 87(2)(b) could not describe how they jumped on him. His head knocked against the ground and his hand was stomped on by one of the officers as a result. § 87(2)(b) was lying face down on the ground in a fetal position. Because he was lying face down, § 87(2)(b) could not see which officer stomped on his hand. About twenty minutes later, two paramedics entered the holding cell and brought § 87(2)(b) to an ambulance. § 87(2)(b) was transported to § 87(2)(b). PO McGovern accompanied § 87(2)(b) to the hospital in the ambulance. At the hospital, § 87(2)(b) was given a bandage for his hand. The prongs from the taser were removed from § 87(2)(b)'s stomach. § 87(2)(b) was also administered a psychological evaluation.

## **Results of Investigation**

### **Police Officer Statements**

#### **Lt. Timothy Harrington**

Lt. Timothy Harrington is § 87(2)(b) years old. He is a white male who is 5'11" tall, weighs 200 pounds and has brown hair and hazel eyes. Lt. Harrington is assigned to the 61<sup>st</sup> Precinct and has been a member of the service for eleven years. Lt. Harrington was interviewed at the CCRB on May 29, 2008 (encl. 12a – 12b). On the day of the incident, Lt. Harrington worked overtime from 4:00 AM to 12:45 PM. He was in uniform and the assigned supervising lieutenant at the 61<sup>st</sup> Precinct. PO McGovern was his operator. Lt. Harrington's memobook (encl. 10) notes that at 6:10 AM, a prisoner was designated an EDP, shot with a taser for his safety and transported to § 87(2)(b).

#### ***Taser/Stun Device Report***

In a taser/stun device report (encl. 11), Lt. Harrington noted that § 87(2)(b) was observed acting irrationally in the 61<sup>st</sup> Precinct holding cell. He was kicking, screaming and spitting. § 87(2)(b) also attempted to hang himself by taking tee-shirt off, tying one end to the cell and attempting to tie the other end around his neck. Officers intervened by attempting to restrain § 87(2)(b) but he resisted by fighting with them. Lt. Harrington decided, for the safety of § 87(2)(b) and the officers, that it would be safer to use the taser on § 87(2)(b). Lt. Harrington discharged the taser at § 87(2)(b) one time. § 87(2)(b) fell to the floor, was restrained with handcuffs and leg shackles and was immediately removed to § 87(2)(b).

#### ***CCRB Interview***

On January 1, 2008, at approximately 3:00 AM, Lt. Harrington returned to the 61<sup>st</sup> Precinct stationhouse after working a New Years detail assignment. When he went to the front desk, he saw that there was a prisoner, subsequently identified as § 87(2)(b) in the holding cell. § 87(2)(b) was cursing, spitting and punching the walls. § 87(2)(b) was yelling that he had been wrongly arrested. Lt. Harrington did not know whether § 87(2)(b) had consumed any alcohol or used any narcotics. Lt. Harrington was able to see § 87(2)(b) because the holding cell area is directly behind the front desk.

After about half an hour to an hour, Lt. Harrington entered the holding cell area and attempted to calm § 87(2)(b) down by speaking to him. Sgt. Alvarado and PO McGovern went with Lt. Harrington. § 87(2)(b) continued to state that he had been wrongly arrested. § 87(2)(b) punched and kicked in the officers' direction through the bars of the cells. None of the officers were in immediate danger because they were not within reach of these blows. § 87(2)(b) told Lt. Harrington that he wanted to go to the hospital because he said he 'knew the system.' Lt. Harrington did not know whether Sgt. Alvarado or PO McGovern would have heard § 87(2)(b)'s request to go to the hospital. Lt. Harrington said that if a prisoner requests and clearly needs medical attention, medical attention would be obtained for him. However, if a prisoner requests medical attention in an attempt to 'beat the system,' an officer is not required to obtain medical attention for him. When § 87(2)(b) requested to go to the hospital, Lt. Harrington told him that he was not going to go to the hospital.

Lt. Harrington stated that § 87(2)(b) had no observable sign of any injury. § 87(2)(b) did not complain of having difficulty breathing, but did complain that his chest felt tight. Lt. Harrington acknowledged that he is not a doctor. Lt. Harrington believed that § 87(2)(b)'s chest was tight because of the way that § 87(2)(b) had been yelling. Lt. Harrington stated that there was no reason to believe that § 87(2)(b) actually had any medical chest conditions. The fact that § 87(2)(b) was yelling indicated to Lt. Harrington that § 87(2)(b) was not in any danger, medically speaking.

Lt. Harrington's conversation with § 87(2)(b) lasted for about an hour. § 87(2)(b) then said something about making the officers take him to the hospital. He tied one arm of his tee-shirt around his neck and tied the other arm around a bar on the entrance to the holding cell. § 87(2)(b) was still standing and it did not

appear as though pressure was extended against his neck. Because of where § 87(2)(b) was standing, Lt. Harrington could not enter the holding cell. Lt. Harrington explained that an EDP is characterized as an individual who is a danger to himself or others. Lt. Harrington made the determination that § 87(2)(b) was an EDP because he had attempted to hang himself.

Lt. Harrington did not attempt to remove the tee-shirt from § 87(2)(b)'s neck. Lt. Harrington immediately shot § 87(2)(b) with the taser. Lt. Harrington stated that it was an 'instantaneous' reaction. After being shot with the taser, § 87(2)(b) immediately fell to the ground. He was not lying near the bench in the holding cell. Lt. Harrington decided to shoot § 87(2)(b) because he wanted to subdue him rather than fight with him. PO McGovern never held the taser and was never instructed to shoot § 87(2)(b) with the taser. Lt. Harrington never called § 87(2)(b) a "junkie motherfucker," Sgt. Alvarado never called § 87(2)(b) a "fucking lowlife," and PO McGovern never called § 87(2)(b) a "fucking shithead."

Lt. Harrington, Sgt. Alvarado and PO McGovern entered the holding cell in order to handcuff § 87(2)(b). § 87(2)(b) resisted their efforts by tossing his body and arms away from the officers. All of the officers held his legs down. While Lt. Harrington did not specifically recall this transpiring, he stated that one of the officers may have accidentally stepped on § 87(2)(b)'s hand. Lt. Harrington did know that § 87(2)(b) was arrested for assault. Lt. Harrington said that § 87(2)(b) never complained of a specific injury and hypothesized that whatever injury § 87(2)(b) may have sustained could have been related to the fight which precipitated his arrest. Lt. Harrington, Sgt. Alvarado and PO McGovern did not use any physical force against § 87(2)(b) which was not necessary to restrain him. One of the officers, possibly Lt. Harrington, called for an ambulance. EMTs responded and transported § 87(2)(b) to § 87(2)(b). § 87(2)(b) accompanied by PO McGovern.

#### **Sgt. Antero Alvarado**

Sgt. Antero Alvarado is § 87(2)(b) years old. He is a Hispanic male who is 5'10" tall, weighs 215 pounds and has black hair and brown eyes. Sgt. Alvarado is assigned to the 61<sup>st</sup> Precinct and has been a member of the service for twelve years. Sgt. Alvarado was interviewed at the CCRB on May 22, 2008 (encl. 14a – 14b). On the day of the incident, Sgt. Alvarado worked from 11:05 PM to 8:08 AM. He was assigned to the front desk and was in uniform. Sgt. Alvarado's memobook (encl. 13a – 13c) did not contain any entries pertaining to the incident.

#### **CCRB Statement**

On January 1, 2008, at approximately 4:00 AM, an individual subsequently identified as § 87(2)(b) was brought before the front desk at the 61<sup>st</sup> Precinct stationhouse. Sgt. Alvarado did not observe any injuries on § 87(2)(b)'s person at this time. § 87(2)(b) appeared calm and was placed in the holding cell. Sgt. Alvarado's statement regarding the manner in which § 87(2)(b) began to act once placed in the holding cell was consistent with that provided by Lt. Harrington. However, Sgt. Alvarado did not hear § 87(2)(b) request medical attention, either when brought before the front desk or while in the holding cell.

Sgt. Alvarado, Lt. Harrington and PO McGovern entered the holding cell area, though not the cell itself, in an attempt to calm § 87(2)(b). They tried to engage him in conversation, but § 87(2)(b) did not react in any way. § 87(2)(b) began kicking and punching in the vicinity of the officers. At one point, § 87(2)(b) removed his shirts and tied one sleeve around a bar of the holding cell while wrapping the other sleeve around his neck. The knot was to the right of the holding cell door, which the officers could still walk in and out of without resistance. He began saying that he was going to kill himself. Lt. Harrington and Sgt. Alvarado determined that § 87(2)(b) was an EDP at this time. They entered the holding cell and attempted to restrain him. The officers could not approach § 87(2)(b) due to the manner in which he was kicking, punching and spitting in their direction.

Lt. Harrington retrieved the taser stored in the front desk and shot § 87(2)(b) with the taser. Sgt. Alvarado stated that he saw no other option aside from the taser which would effectively have restrained § 87(2)(b) who was acting in a manner which posed a danger to himself and any officer who attempted to interact with or restrain him in any way. § 87(2)(b) did not attempt to evade the taser. Lt. Harrington shot him while

standing in the door of the holding cell. § 87(2)(b) immediately fell to the floor. § 87(2)(b) did not physically resist in any way once shot with the taser. He was lying towards the middle of the holding cell and was not lying near the bench in the cell. All three officers assisted in securing § 87(2)(b) in handcuffs. None of the officers deliberately stomped on § 87(2)(b)'s hand.

An ambulance was called for by one of the officers and § 87(2)(b) was transported to § 87(2)(b). Throughout the incident, § 87(2)(b) never complained of anxiety or heart problems. He never requested medical attention. He never lost consciousness. Lt. Harrington never called him a “junkie motherfucker” or cursed at him in any way, Sgt. Alvarado never called him a “fucking lowlife,” and PO McGovern never called him a “fucking shithead.”

### **PO Michael McGovern**

PO Michael McGovern is § 87(2)(b) years old. He is a white male who is 5’7” tall, weighs 190 pounds and has brown hair and blue eyes. PO McGovern is assigned to the 61<sup>st</sup> Precinct and has been a member of the service for three years. PO McGovern was interviewed at the CCRB on May 15, 2008 (encl. 16a – 16b). On the day of the incident, PO McGovern was Lt. Harrington’s assigned operator. He worked from 12:00 AM to 8:00 AM, in uniform and was assigned to a marked police vehicle. PO McGovern’s memobook (encl. 15a – 15c) noted that at 6:40 AM, he transported a prisoner to § 87(2)(b). It further noted that Lt. Harrington had used a taser on this prisoner, who had been designated an EDP, because the he had attempted to hang himself.

### **CCRB Statement**

On January 1, 2008, at approximately 3:00 AM, PO McGovern and Lt. Harrington returned to the 61<sup>st</sup> Precinct. When PO McGovern went to the front desk, he observed that an individual subsequently identified as § 87(2)(b) was in the holding cell. PO McGovern description of § 87(2)(b)'s behavior was consistent with Lt. Harrington’s statement. However, PO McGovern did not hear § 87(2)(b) request medical attention at any time while in the holding cell. A while later, PO McGovern saw § 87(2)(b) tie the arms of his two shirts together. § 87(2)(b) quickly tied one of these arms to a bar on the entrance to holding cell and the other arm around his neck. § 87(2)(b) then slumped to his knees and used the weight of his body in an attempt to hang himself. The knot on the bar was not fixed above § 87(2)(b)'s head; had he stood up, he would have ceased to effectively hang himself.

PO McGovern notified Lt. Harrington and Sgt. Alvarado. All three officers entered the holding cell area and attempted to approach § 87(2)(b). They could not enter the holding cell because § 87(2)(b) began kicking at them and hanging against the entrance. He was not saying anything during this time. PO McGovern tried to untie the knot, but was again kicked at by § 87(2)(b). None of these kicks hit PO McGovern or, to the best of his knowledge, Lt. Harrington and Sgt. Alvarado. They did, however, prevent the officers from getting closer to § 87(2)(b).

Lt. Harrington retrieved the taser stored at the front desk and shot § 87(2)(b) with the taser between the bars of the holding cell. PO McGovern could see no other options which would have been feasible at this time to prevent § 87(2)(b) from hanging himself or allow the officers to get closer to him. PO McGovern reached up and was able to untie the knot. § 87(2)(b) then fell to the floor of the holding cell. § 87(2)(b) never appeared to lose consciousness. § 87(2)(b) lay near the entrance of the holding cell.

PO McGovern, Lt. Harrington and Sgt. Alvarado entered the holding cell and attempted to handcuff § 87(2)(b) who immediately began kicking and hitting them. PO McGovern was struck two or three times on the side of his arms with § 87(2)(b)'s fists. PO McGovern was attempting to grab § 87(2)(b)'s arms. § 87(2)(b) was handcuffed relatively swiftly. None of the officers deliberately stomped on his hand. Lt. Harrington never called § 87(2)(b) a ‘junkie motherfucker,’ Sgt. Alvarado never called § 87(2)(b) a ‘fucking lowlife,’ and PO McGovern never called § 87(2)(b) a ‘fucking shithead.’

PO McGovern called for an ambulance. Prior to making this call, PO McGovern never heard § 87(2)(b) request medical attention or complain of suffering an anxiety attack. PO McGovern accompanied § 87(2)(b)

§ 87(2)(b) to § 87(2)(b) PO McGovern confirmed that the reason § 87(2)(b) was designated an EDP was based on his attempt to hang himself.

## **Medical Records:**

### **Ambulance Call Report**

An ambulance call report prepared on January 1, 2008 (encl. 17a – 17b), noted that EMS responded to the 61<sup>st</sup> Precinct. They found § 87(2)(b) lying on the ground. § 87(2)(b) had been shot with a taser. Medical personnel found that § 87(2)(b) was alert and oriented. § 87(2)(b) had one taser gun needle in his upper abdomen. § 87(2)(b) was transported to the Hospital. While enroute, § 87(2)(b) complained of shortness of breath and was given oxygen.

### **§ 87(2)(b) Emergency Department Records**

According to emergency department records (encl. 18a – 18b) prepared on § 87(2)(b), medical personnel noted that § 87(2)(b) was brought in by EMS and was in police custody. § 87(2)(b) had threatened to kill himself by hanging, was shot with a taser, and complained of chest pain and shortness of breath. Medical personnel noted that § 87(2)(b) had a psychiatric history, a history of drug abuse, and was agitated. Medical personnel were informed by the NYPD that § 87(2)(b) had been in a holding cell and had started yelling that his heart hurt and he could not breathe. § 87(2)(b)'s presumptive diagnosis was noted as chest pain and he was categorized an EDP.

### **§ 87(2)(b) Progress Notes**

According to progress notes (encl. 10) updated throughout § 87(2)(b), medical personnel noted that § 87(2)(b) had been brought in as an EDP, was handcuffed, and had complained of shortness of breath. Medical personnel noted that he had also been shot with a taser, and a psychologist had been called to consult with § 87(2)(b). § 87(2)(b) was medicated with Ativan. § 87(2)(b) medical personnel noted that § 87(2)(b) was alert, responsive and in no distress. § 87(2)(b) was still in the custody of the New York City Police Department, and was awaiting further evaluation.

### **§ 87(2)(b) Medical Chart Records**

Medical chart records prepared on § 87(2)(b) (encl. 20a – 20i), note that § 87(2)(b) had complained of unspecified chest pain and pain in an unspecified joint. § 87(2)(b) also complained of emotional problems. Medical personnel prescribed aspirin and Isordil for his chest pain. Pepcid was prescribed for gastric upset and Lrazepam was prescribed for agitation. It was also noted that § 87(2)(b) had sustained a fracture on the fourth digit of his right hand. The priority of this injury was noted as urgent. The clinical history of this injury was noted as trauma and a soft tissue swelling was noted at the fourth distal interphalangeal joint. § 87(2)(b)'s finger was secured in a sling.

§ 87(2)(b) was noted to be a well nourished, well developed male with no wheezing or other abnormal indicators in his chest and lungs. § 87(2)(b)'s lungs, heart and visualized pleural structures failed to show any abnormality.

### **§ 87(2)(b) Toxicology Results**

§ 87(2)(b) (encl. 21a – 21b), medical personnel noted that § 87(2)(b) had been tested for barbiturates, methadone, and opiates with negative results. PCP and cannabinoids were not detected. § 87(2)(b) tested positive for cocaine.

### **§ 87(2)(b) Psychiatric Referral**

Psychiatric referral records (encl. 22a – 22f) show that on § 87(2)(b), § 87(2)(b) was referred for a psychiatric evaluation due to agitation. Medical personnel noted that § 87(2)(b) had been

brought into the ER by the NYPD. When arrested and placed in a holding cell, § 87(2)(b) began to complain of shortness of breath. § 87(2)(b) described this feeling as 'tightness in his chest' and a feeling that something was closing in on his chest and neck. § 87(2)(b) stated that it felt exactly like earlier asthma attacks, but no one paid any attention to his symptoms. § 87(2)(b) stated that he then tried to put his shirt around his neck and feign suicide. That is when he was shot with a taser and brought to the hospital. Medical personnel noted that § 87(2)(b) became more comfortable after receiving a bronchodilator treatment.

Medical personnel noted that § 87(2)(b) was an active smoker, was on a methadone program, occasionally used alcohol, but denied any other drug use. Medical personnel noted that he appeared anxious, but was not in distress. It was noted that the clinical presentation in § 87(2)(b) was suggestive of anxiety attacks and asthma exacerbation. His EKG was not suggestive of acute coronary syndrome. Medical personnel noted that § 87(2)(b) had been arrested for § 87(2)(b), and had tested positive for drugs and admitted to drinking. Medical personnel noted that § 87(2)(b) acted in a threatening manner and was shot with a taser. He had pretended to hang himself, which demonstrated attention seeking behavior. Medical personnel noted that § 87(2)(b) was not suicidal, was not psychotic and not on any medication.

### **Police Department Documents:**

#### **61<sup>st</sup> Precinct Roll Call**

The roll call (encl. 23) for the 61<sup>st</sup> Precinct on January 1, 2008, shows that PO McGovern was the assigned lieutenant's operator in radio motor patrol vehicle 2252. Neither Lt. Harrington nor Sgt. Alvarado appeared on the roll call for the day of the incident.

#### **61<sup>st</sup> Precinct Command Log**

The command log (encl. 24) for January 1, 2008, shows that PO Ghaffar from the 66<sup>th</sup> Precinct arrested § 87(2)(b) at 1504 Avenue U for § 87(2)(b). His physical and mental condition were listed as apparently normal. § 87(2)(b) was placed in the holding cell at 3:50 AM. He was transported to § 87(2)(b) via EMS at 6:35 AM and returned to the precinct at 11:55 AM.

### **Arrest Report and Complaint Reports**

An arrest report (encl. 25a – 25c) and two complaint reports (encl. 24a – 24d) show that § 87(2)(b) was arrested by PO Ghaffar of the 66<sup>th</sup> Precinct on January 1, 2008, at 3:48 AM, in front of § 87(2)(b) in Brooklyn. He was charged with § 87(2)(b). According to his arrest report (encl. 25a – 25c), § 87(2)(b) punched a victim in the nose, subsequently breaking it and causing sustained pain and abrasions. The individual § 87(2)(b) punched was removed to § 87(2)(b). A search incident to § 87(2)(b)'s arrest found § 87(2)(b) to be in possession of nine pills which were not prescribed to him. Physical force was used to arrest § 87(2)(b). According to a complaint report (encl. 24a – 24d) prepared in relation to the incident, a second victim reported that § 87(2)(b) had thrown her out of a two-story apartment building window, causing physical injury to her neck. This victim then ran away on the sidewalk. Prior to the assault, the victim and § 87(2)(b) had engaged in a verbal argument.

### **Property Vouchers**

Three voucher slips (encl. 27a – 27c) were prepared for § 87(2)(b). Incident to his arrest, nine octagon shaped and peach colored pills were found on his person. One taser cartridge and two darts used on § 87(2)(b) while he was in the holding cell were vouchered. The half sleeve of a white tee-shirt and the half sleeve of a grey sweatshirt which § 87(2)(b) attempted to use to hang himself were vouchered.



§ 87(2)(b) | § 86(1)(3)&(4) | § 87(2)(c)

[illegible]

[REDACTED]

[REDACTED]

Lt. Timothy Harrington and Sgt. Antero Alvarado have been members of the service for eleven years. PO Michael McGovern has been a member of the service for two years. Lt. Harrington, Sgt. Alvarado and PO McGovern have had no CRB allegations substantiated against them (encl. 4a – 4c).

## Officer Identification

§ 87(2)(g)

§ 87(2)(g)

### Undisputed Facts

It is undisputed that Lt. Harrington did not obtain medical treatment for § 87(2)(b) upon request. It is undisputed that § 87(2)(b) attempted to hang himself. It is undisputed that Lt. Harrington, Sgt. Alvarado and PO McGovern used force against § 87(2)(b).

### Disputed Facts

§ 87(2)(g)

### Assessment of Evidence

According to § 87(2)(b) he began to experience difficulty breathing and a tightening pain in his chest while in the holding cell. § 87(2)(b) stated that he asked Lt. Harrington if he could go to the hospital because he could not breathe. In reply, Lt. Harrington told him he was not going anywhere. Lt. Harrington confirmed that § 87(2)(b) had asked to go to the hospital. § 87(2)(g)

Lt. Harrington also confirmed that § 87(2)(b) had complained of pain in his chest, though he stated that § 87(2)(b) never complained of having difficulty breathing. However, § 87(2)(b) Emergency Department Records (encl. 18a – 18b) note that § 87(2)(b) had been in a holding cell and had started yelling that his heart hurt and he could not breathe. § 87(2)(g)

§ 87(2)(b) stated that he continued to ask to go to the hospital for thirty to forty-five minutes until he lost consciousness. Lt. Harrington corroborated that he had told § 87(2)(b) he could not go to the hospital and then conversed with him for about an hour. However, none of the officers stated that § 87(2)(b) had lost consciousness and none of § 87(2)(b)'s medical records (encl. 17a – 17b; 18a – 18b; 10; 20a – 20i) gave any indication that § 87(2)(b) had lost consciousness. § 87(2)(g)

It is undisputed that § 87(2)(b) attempted to hang himself by tying one end of his shirt to a bar in the holding cell and tying the other end around his neck. § 87(2)(b) said that, as he affixed the knotted shirt around his neck, he told the officers to bring him to the hospital. Lt. Harrington recalled that § 87(2)(b) had said something to this effect, § 87(2)(g). According to Lt. Harrington and PO McGovern, § 87(2)(b) affixed his tee-shirt to a bar on the entrance to the holding cell, thereby preventing the officers from entering the holding cell. Lt. Harrington and PO McGovern corroborated this statement.

§ 87(2)(g)

PO McGovern stated that § 87(2)(b) punched and kicked at the officers while attempting to hang himself, thus preventing the officers from removing the tee-shirt from the bar of the holding cell. Sgt. Alvarado corroborated this statement. According to Lt. Harrington, § 87(2)(b) attempted to punch and kick the officers earlier during the incident, but was not resisting in this fashion at the time in which he attempted to hang himself. However, the narrative of the taser/stun device report (encl. 11) prepared by Lt. Harrington following the incident was consistent with Sgt. Alvarado and PO McGovern's statements. § 87(2)(g)

§ 87(2)(b) alleged that before he was shot with the taser, Lt. Harrington called him a “junkie motherfucker” while Sgt. Alvarado called him a “fucking lowlife” and PO McGovern called him a “fucking shithead.” § 87(2)(b) stated that the officers then told him he could go to the hospital. Lt. Harrington then retrieved a taser, said, “We got you now, motherfucker” and pointed the taser at § 87(2)(b) while he ran back and forth in the holding cell to avoid it. Lt. Harrington then handed the taser to PO McGovern and instructed him to shoot § 87(2)(b) who shot § 87(2)(b) through the bars of the holding cell.

§ 87(2)(g)

§ 87(2)(b) Lt. Harrington, Sgt. Alvarado and PO McGovern stated that they never directed profanity towards § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) All officer statements, in addition to PO McGovern’s memobook (encl. 15a – 15c) and the taser/stun device report (encl. 11), show that Lt. Harrington shot § 87(2)(b) with the taser in an effort to prevent § 87(2)(b) from hanging himself. By all officer statements, Lt. Harrington’s use of the taser was immediate to § 87(2)(b)’s attempt to hang himself and after § 87(2)(b) was designated an emotionally disturbed person. Their statements were also consistent with the taser/stun device report (encl. 11). § 87(2)(g)

§ 87(2)(b) alleged that, once he was shot with the taser, Lt. Harrington, Sgt. Alvarado and PO McGovern ‘jumped on top’ of him. In the process, one of the officers stepped on his right hand. § 87(2)(b)’s various statements regarding the force used against him were not consistent. At the time of his initial complaint, he alleged that his head was smashed against a wall and his finger was broken (encl. 7a – 7b). While § 87(2)(b) did complain of pain in a joint when at § 87(2)(b) (encl. 20a – 20i), he did not specify which joint and made no statements regarding the manner in which he had sustained these injuries. The fact that he did not complain of this injury during triage, as evidenced by emergency department records (encl. 18a – 18b), brings into question the severity of the injury. Additionally, § 87(2)(b)’s arrest report (encl. 25a – 25c) shows that he was arrested for assault, and complaint reports (encl. 26a – 26d) show that § 87(2)(b) punched a victim in the nose prior to being arrested. § 87(2)(g)

According to Lt. Harrington, all three officers entered the holding cell after § 87(2)(b) was shot with the taser, held his legs in place, and handcuffed him. § 87(2)(g)

§ 87(2)(b) Sgt. Alvarado and PO McGovern concur that all three officers assisted in handcuffing § 87(2)(b). Both PO McGovern and Lt. Harrington stated that § 87(2)(b) continued to resist the officers’ attempts to handcuff him.

Lt. Harrington acknowledged that an officer may have accidentally stepped on § 87(2)(b)’s hand. § 87(2)(b)’s medical chart records (encl. 20a – 20i) show that he sustained a fracture on the fourth digit of his right hand. § 87(2)(g)

**Allegation A. Lt. Timothy Harrington did not obtain medical treatment for § 87(2)(b)**

§ 87(2)(g)

Lt. Harrington stated that if a prisoner requests medical attention in an attempt to ‘beat the system,’ an officer is not required to obtain medical attention for them. However, Section 210-04 of the Patrol Guide, which outlines police procedure for prisoners requiring medical or psychiatric treatment, does not contain any provisions which allow an officer discretionary power over when and under what circumstances a prisoner will be provided with medical attention (encl. 1a – 1g). Lt. Harrington stated that his decision was influenced by the fact that § 87(2)(b) did not have any visible injuries. However, §10.09 of Criminal Procedural Law defines ‘physical injury’ as “impairment of physical condition or substantial pain” (encl. 2). Nowhere in this definition is ‘physical injury’ characterized by the visibility of the injury itself.

§ 87(2)(g) Section 210-04, which states that additional personnel will be assigned to accompany the prisoner to the hospital in light of “lack of physical signs of injury (e.g., faking injury to attempt escape)” (encl. 1a – 1g). § 87(2)(g)

§ 87(2)(g) According to the Police Academy Curricula’s materials, an officer must “get immediate help to people who have difficulty breathing” (encl. 3) § 87(2)(g)

**Allegation B. Lt. Timothy Harrington spoke obscenely to § 87(2)(b)**

**Allegation C. Sgt. Antero Alvarado spoke obscenely to § 87(2)(b)**

**Allegation D. PO Michael McGovern spoke obscenely to § 87(2)(b)**

§ 87(2)(g)

**Allegation E. Lt. Timothy Harrington shot § 87(2)(b) with a taser**

§ 87(2)(g)

According to Section 216-05 of the Patrol Guide, a taser may be used to assist in restraining an emotionally disturbed person if the individual is “evincing behavior that might result in physical injury to himself or others” (encl. 4a – 4c). § 87(2)(g)

Section 216-05 of the Patrol Guide exists in order to safeguard those who may not voluntarily seek medical assistance. § 87(2)(g)

In circumstances where an emotionally disturbed person is evincing self injurious behavior, an officer may use “necessary force...to prevent serious physical injury or death” and “may also take reasonable measure to terminate or prevent such behavior” (encl. 4a – 4c) § 87(2)(g)

**Allegation F. Lt. Timothy Harrington used physical force against § 87(2)(b)**  
**Allegation G. Sgt. Antero Alvarado used physical force against § 87(2)(b)**  
**Allegation H. PO Michael McGovern used physical force against § 87(2)(b)**

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] According to Section 216-05 of the Patrol Guide,  
an officer may use physical force against an emotionally disturbed person “to the extent necessary to  
restrain the subject until delivered to a hospital” (encl. 4a – 4c); § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: